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BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA

In the Matter of the Certificate of Authority of)	File No. DISP06092656
UNUMPROVIDENT CORPORATION,)	STIPULATION, WAIVER AND ORDER
PROVIDENT LIFE AND ACCIDENT)	
INSURANCE COMPANY AND UNUM LIFE)	
INSURANCE COMPANY OF AMERICA)	
Respondents.)	

STIPULATION AND WAIVER

Respondents UnumProvident Corporation, Provident Life and Accident Insurance Company (“Provident Life”) and Unum Life Insurance Company of America (“Unum Life”) (collectively, “Respondents”) and the California Department of Insurance (“Department”) stipulate as follows:

1. All terms not otherwise defined herein shall have the meaning, if any, assigned to them, as of the Effective Date of this Stipulation, Waiver and Order or as subsequently modified, by the California Insurance Code and its implementing regulations. Whenever the terms listed below are used in this Stipulation, Waiver and Order, the following definitions shall apply:

(a) “Agreements” shall mean all understandings, agreements, contracts and arrangements concerning any Compensation to be paid to a Producer in connection with the bidding, placement or renewal of Employee Benefit Insurance. The term Agreements includes, but is not limited to, “Special Producer Agreements,” “Placement Service Agreements,” “Market Service Agreements,” and all other Compensation agreements, by whatever name, and whether written or oral, under which Compensation is paid to a Producer, directly or indirectly, in connection with the bidding, placement or renewal of any Employee Benefit Insurance policy, service or product.

(b) “Compensation” shall mean anything of material value given to a Producer in connection with the bidding, placement or renewal of Employee Benefit Insurance, including, but not limited to, Contingent Compensation, Service Fees, money, credits, loans, forgiveness of principal or interest, vacations, prizes, gifts, or the payment of employee salaries or expenses.

(c) “Contingent Compensation” is any Compensation contingent upon any Producer:

- (i) placing a particular number of contracts, policies, lives or dollar value of premium with Respondents; (ii) achieving a particular level of growth in the number of contracts, policies or lives placed or dollar value of premium with Respondents; (iii) meeting a particular rate of retention or renewal of contracts or policies, lives or premium in force with Respondents; (iv) placing or keeping sufficient Employee Benefit Insurance business with Respondents to achieve a particular loss ratio or any other measure of profitability; or (v) providing preferential treatment to Respondents in the placement process, including but not limited to giving last looks, first looks, rights of first refusal, competitive bidding information not otherwise given to other insurers, presenting Respondents’

competitors in the placement process in unfavorable terms or limiting the number of quotes sought from insurers for insurance premiums.

(d) “Effective Date” means the date upon which this Stipulation, Waiver and Order is executed by the Department and Respondents.

(e) “Employee Benefit Insurance” shall mean an insurance contract issued to or insuring California customers or residents providing coverage to groups of employees and/or their dependents pursuant to a group insurance policy issued to the employer, whether or not the plan is an ERISA or non-ERISA plan, including, but not limited to, regular employer-paid plan insurance, for any of the following purposes: group life, accidental death and dismemberment, long and short term disability (“LTD” and “STD”), health, group long term care and/or related insurance coverage. Employee Benefit Insurance shall also include supplemental insurance made available to plan participants (and/or their beneficiaries), partially or entirely at their expense through a policy issued to their employer, including supplemental life, accidental death and dismemberment, long and short term disability, health, long term care and/or related insurance coverage (“Supplemental Employee Benefits Insurance”).

(f) “Producer” means any natural person or entity who acts or purports to act on behalf of another to obtain or renew an Employee Benefit Insurance policy, or who provides or purports to provide assistance and/or consultation in connection with the placement, purchase and/or renewal of an Employee Benefit Insurance policy, product or service, regardless of whether that person or entity is licensed as such, and regardless of whether that person or entity styles herself a Producer, broker, agent, consultant or otherwise. A Producer does not include salaried employees of Respondents or captive agents.

(g) “Service Fees” shall mean any fees paid by Respondents to a Producer in relation to Employee Benefit Insurance, including, but not limited to, communication fees, marketing fees, implementation fees, enrollment fees, audit fees and Request for Referral fees.

2. Respondents Provident Life and Unum Life (the “Insurer Respondents”) currently are, and at all times relevant hereto were, insurers licensed to conduct various classes of insurance business in California and were conducting insurance business in California.

1 3. On November 18, 2004, the Insurance Commissioner filed a complaint in Superior Court
2 pursuant to his authority under Insurance Code §12928.6, which complaint was subsequently amended
3 on June 6, 2005, by the filing of a Second Amended Complaint (“SAC”). That action is *The People of*
4 *the State of California by and through John Garamendi, Insurance Commissioner of the State of*
5 *California, Plaintiff vs. Universal Life Resources, et al.*, Case No. GIC838913 (Cal. Sup. Ct., San
6 Diego) (the “Civil Action”). The allegations recited in the SAC are hereby incorporated as allegation in
7 this Stipulation, Waiver and Order.

8 4. Respondents dispute and deny the allegations recited in the SAC.

9 5. The Department and Respondents believe that it is in the public interest to resolve all
10 matters raised in the Civil Action.

11 THEREFORE, with respect to the matters stated herein, Respondents and the Department agree
12 as follows:

13 A. Respondents waive their right to a hearing and all other due process rights that may be
14 accorded to them by the California Administrative Procedure Act (Sections 11500-11528 of the
15 Government Code), California Insurance Code, California Constitution, United States Constitution, and
16 every other statute, case and regulation. The parties waive any rights they may have in connection with
17 further proceedings in the Civil Action.

18 B. Respondents agree that in lieu of further disciplinary action, the Commissioner, by his
19 execution of this Stipulation, Waiver and Order, and without further notice to Respondents, orders that
20 Respondents comply with Cal. Ins. Code and related regulations including, but not limited to, §§332,
21 781, 790.02 and 790.03.

22 C. Respondents further agree to the following business reforms which have been
23 implemented or will be implemented no later than 90 days after the Effective Date (the
24 “Implementation Date”):

25 (i) Respondents will assign to personnel the responsibility for compliance
26 with the Stipulation, Waiver and Order, and the use of disclosure statements that will advise an
27 Employee Benefit Insurance purchaser, including a purchaser of Supplemental Employee Benefit
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Insurance, of the Compensation that may be paid to a Producer in connection with the bidding, placement or renewal of Employee Benefit Insurance;

(ii) Before the time a customer retains an Insurer Respondents to provide Employee Benefit Insurance, the Insurer Respondents will provide the customer with the base or standard commission to be paid on a percentage basis of premiums paid for all policies issued or renewed after the Implementation Date and a detailed description of how the base or standard commission is calculated or determined and paid, and any other Compensation to be paid. Insurer Respondents shall also provide an estimate of the percentage of any Contingent Compensation for which a Producer may be eligible. With respect to Contingent Compensation, such estimate will be expressed as a specific dollar amount and/or as a percentage of premium that may be paid and will note the performance factors such as premiums, persistency and loss/claims ratios that can trigger the payment of Contingent Compensation, as well as a detailed description of how the Contingent Compensation is (or would be) calculated or determined. At the time of policy renewal, Insurer Respondents shall also provide the customer with the amount of any increase in the base or standard commission to be paid, if any, as compared to prior years. Such disclosures will also be placed by Respondents on their websites;

(iii) After the Implementation Date, all Agreements entered into or renewed by Respondents shall include a provision obligating the Producer to provide the disclosures provided for in ¶C.(ii) to the client or prospective client;

(iv) Respondents will provide adequate training of their Employee Benefit Insurance employees with responsibility for Producer Compensation and for customer communications in compliance with the terms of this Stipulation, Waiver and Order and ensure that Respondents (1) monitor the implementation of the business reforms herein; (2) ensure that they are implemented; and (3) establish a dedicated working group within its existing compliance system to respond to customer inquiries concerning Compensation;

(v) Respondents shall provide an annual verification for a period of three years that Respondents' employees have been adequately trained about Producer Compensation issues,

1 and that Respondents are monitoring their compliance with the terms of this Stipulation, Waiver and
2 Order;

3 (vi) Respondents shall disclose all information as is contained within their
4 business records and as needed by Producers and/or customers to complete Schedule A of the Form
5 5500 annual report, including but not limited to the name of each Producer and full amount of any
6 Compensation paid or to be paid to that Producer that is directly or indirectly attributable to the bidding,
7 placement or renewal of Respondents' Employee Benefit Insurance policies or services. Respondents'
8 practices with respect to the reporting of Compensation on Form 5500 and Schedule A thereto, shall be
9 in compliance with all IRS and Department of Labor requirements, including the DOL's Advisory
10 Opinion 2005-02A ("*Fortis*"). Further, Respondents have already provided revised Schedule A's to
11 their customers reflecting all Compensation paid for plan year beginning January 1, 2004, and will
12 provide a revised Schedule A form, if requested by a customer, for plan years 2000 through 2003.

13 D. Respondents further agree to pay \$700,000.00 in attorney's fees and all costs incurred by
14 the Department and its counsel relating to this Stipulation, Waiver and Order, and action styled *The*
15 *People of the State of California by and through John Garamendi, Insurance Commissioner of the State*
16 *of California, Plaintiff vs. Universal Life Resources, et al.*, Case No. GIC838913 (Cal. Sup. Ct., San
17 Diego) within 10 days of execution of this Stipulation, Waiver and Order. No other monetary payment
18 is required of Respondents.

19 E. Respondents further agree to fully and promptly cooperate with the Department with
20 regard to any investigation, or related proceeding or action, regarding any Compensation of any type
21 paid by Respondents to any Producer. Cooperation shall include, without limitation:

22 (i) the voluntary production (without service of subpoena) of (1) any and all
23 non-privileged information and documents or other tangible evidence reasonably available and
24 requested by the Department in connection with a regulatory investigation, and (2) any compilations or
25 summaries of information or data that the Department requests be prepared;

26 (ii) Respondents will use their best efforts to ensure that current and former
27 officers, directors, employees and agents of Respondents fully and promptly cooperate with the
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1 Department in connection with any regulatory investigation or related proceeding, including attendance
2 (without service of a subpoena) at any proceeding or other meeting as requested by the Department; and

3 (iii) Respondents retain the right to object to requests for cooperation that
4 would be deemed unduly burdensome and oppressive if sought as a matter of discovery in a civil action.

5 F. Respondents further warrant that the following information provided to and relied on by
6 the Department in its investigation and negotiation of this Stipulation, Waiver and Order is true and
7 correct and that, where applicable, the following practices will not change except as provided for in ¶H:

8 (i) Prior to the time Insurer Respondents are selected to provide Employee
9 Benefits Insurance, Insurer Respondents typically have no contact with employees in the sale of
10 Employee Benefit Insurance, but provide all information to employees through the employer.
11 Accordingly, the disclosures required by ¶C.(ii) herein will be provided to the employer whose
12 employees may purchase the Employee Benefit Insurance. However, whenever Insurer Respondents
13 have any direct contact with an employee or other purchaser of Employee Benefit Insurance prior to
14 being selected to provide Employee Benefit Insurance, the disclosure contemplated by ¶C.(ii) must be
15 provided. If an employer requests assistance in providing information concerning Compensation to its
16 employees, the Insurer Respondents will use best efforts to facilitate such disclosure. If an employee
17 requests information at any time from Respondents concerning the Compensation paid to a Producer for
18 the insurance coverage purchased by the employee, Respondents will provide same;

19 (ii) Respondents will not enter into any new financial relationships, including
20 equity ownership and/or financing, between (1) Respondents and any of their parents or subsidiaries,
21 and/or affiliates, and (2) any Producers, and is actively terminating existing loan relationships.
22 Respondents undertake to liquidate any existing equity positions when Respondents have the authority
23 to do so and market conditions permit. Additionally, to the extent such relationships currently exist,
24 they will be disclosed in accordance with the *Fortis* decision issued by the Department of Labor,
25 Advisory Opinion 2005-02A;

26 (iii) Respondents do not pay Compensation to Producers based on the
27 profitability or claims experience of the Employee Benefit Insurance placed by the Producers;

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1 (iv) Respondents do not sponsor Producer production contests or similar
2 award programs which provide for Compensation or other remuneration (such as trips, gifts, bonuses) to
3 Producers. Nor do Respondents provide any “back office support” or similar soft-dollar support that is
4 conditioned on the production or retention of a specified amount of business for Respondents, or other
5 contingencies identified in ¶1(c) above, entitling a Producer to Contingent Compensation. Respondents
6 do not cover or reimburse travel expenses for conferences based on the production or retention of a
7 specified amount of business for Respondents, or other contingencies identified in ¶1(c) above, entitling
8 a Producer to Contingent Compensation.

9 (v) Respondents continue to hold business meetings for their Producers,
10 which are in accordance with IRS regulations defining business meetings;

11 (vi) For any new Employee Benefit Insurance policy submitted on or after
12 June 1, 2005, no overrides or incentives will be paid for net of commissions policies unless prior written
13 authorization from the policyholder is provided to Insurer Respondents; and

14 (vii) Respondents have established an internal audit program to monitor
15 compliance with their disclosure programs by requiring review of sample inforce policy files to confirm
16 that:

17 1) where a Producer is paid non-standard compensation, a single case
18 agreement (“SCA”) was signed by the customer, Producer and underwriter;

19 2) where a Producer receives any compensation from the customer,
20 no commissions are paid by Respondents to the Producer without prior written customer consent;

21 3) customer consent is obtained prior to changing a broker of record
22 or adding a broker of record; and

23 4) all 5500 data forms are mailed directly to customers and include
24 all commissions, overrides, incentives and fees which were paid during the plan year pursuant to DOL
25 standards.

26 G. Respondents agree to comply with the Stipulation, Waiver And Order. Respondents
27 acknowledge that if it is found by the Commissioner, after notice and hearing pursuant to the California
28 Administrative Procedure Act (California Government Code §11370 *et seq.*), to have violated a

1 covenant recited in this Stipulation, Waiver and Order, Respondents shall be liable to the State of
2 California for a civil penalty as prescribed by law for each act in violation of the Stipulation, Waiver
3 and Order. The amount of the fine shall be determined in accordance with the provisions of Cal. Code
4 Regs. tit. §2591 *et seq.*

5 H. If, after the effective date of this Stipulation, Waiver and Order, the Department or the
6 California Legislature enacts statutes, rules or other regulations which modify, circumvent or alter the
7 terms of this Stipulation, Waiver and Order, then Respondents shall comply with same and the terms
8 herein are so modified. At the end of three years from the Implementation Date, Respondents may seek
9 relief from any of the terms of the Stipulation and Waiver from the Department with a written
10 explanation as to the relief sought and the reasons therefor. The Department will grant any such relief
11 that seeks to subject Respondents to substantially the same restrictions on the payment and/or disclosure
12 of Compensation that the Department has agreed to for any other insurer (or an affiliate of such an
13 insurer) in the Civil Action, and/or which is in compliance with the law at that time.

14 I. Respondents acknowledge that, insofar as the future application of Cal. Ins. Code.
15 §790.07 is concerned, the Order provided for herein shall have the same force and effect as if imposed
16 after a hearing held pursuant to Cal. Ins. Code §790.05. The “Findings and Declaration of
17 Commissioner” portion of this Stipulation, Waiver and Order will have collateral estoppel effect in any
18 subsequent proceedings between the parties to enforce compliance with this Stipulation, Waiver and
19 Order. In any proceedings unrelated to the enforcement of this Stipulation, Waiver and Order, the
20 “Findings and Declaration of Commissioner” may only be used by the Department in the same manner
21 as against any other insurer.

22 J. This Stipulation and Waiver is not an admission of liability, wrongdoing or violation of
23 the law. Respondents and Department further agree that this Stipulation, Waiver and Order represents a
24 complete resolution of the issues raised in the Civil Action referenced above and no further action will
25 be brought against Respondents for similar incidents as those raised in the Civil Action that pre-date
26 30 days after the date of the approval of this Stipulation, Waiver and Order by the Commissioner. Upon
27 execution of this Agreement, the parties will jointly file with the Court a Stipulation dismissing with
28 prejudice the Civil Action.

1 K. Respondents acknowledge that this Stipulation, Waiver and Order is a public record
2 under California Government Code §11517(d), and that it is accessible to the public pursuant to
3 California Public Records Act, California Government Code §6250 *et seq.* Pursuant to Cal. Ins. Code
4 §12968 the Stipulation will also be posted on the Department's Internet web site.

5 L. Respondents acknowledge that Cal. Ins. Code §12921 requires the Commissioner to
6 approve the final settlement of this matter, and that both the settlement terms and conditions contained
7 herein and the acceptance of those terms and conditions are contingent upon the Commissioner's
8 personal approval.

9 M. This Stipulation, Waiver and Order may be executed in counterparts, each of which shall
10 be deemed to constitute an original, and all of which, taken together, shall constitute one and the same
11 instrument. The execution of one counterpart by any Party shall have the same force and effect as if
12 that Party had signed all other counterparts.

13 DATED: November 1, 2006

UNUMPROVIDENT CORPORATION,
PROVIDENT LIFE AND ACCIDENT
INSURANCE COMPANY AND UNUM LIFE
INSURANCE COMPANY OF AMERICA

16 By /s/

17 Chris Collins

18 DATED: November 1, 2006

CALIFORNIA DEPARTMENT OF INSURANCE

20 By /s/

21 Jon Tomashoff
Senior Staff Counsel

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23 **FINDINGS AND DECLARATION OF COMMISSIONER**

24 The Commissioner finds and declares as follows:

25 1. Section 332 imposes upon an insurer a duty to disclose to applicants for its insurance,
26 prior to issuance of a policy, the material details of compensation and contingent compensation the
27 insurer may pay or will pay to a Producer that represents the policyholder or applicant;
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1 2. A violation of §332 is *per se* hazardous to policyholders and the public, and constitutes
2 grounds, pursuant to §§701, 1065.1 and 1065.3 for the Commissioner to issue an order requiring an
3 insurer to comply with that section;

4 3. All insurers conducting business in California, including, but not limited to Respondents,
5 must comply with §332 by disclosing to policyholders or applicants for its insurance, prior to issuance
6 of a policy, the material details of Compensation and Contingent Compensation the insurer may pay or
7 will pay to a Producer as provided for herein;

8 * * *

9 **ORDER**

10 The Commissioner orders as follows:

11 1. Respondents must perform all actions required under this Stipulation and Waiver and
12 abide by all covenants and representations recited therein.

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14 DATED: November 1, 2006

JOHN GARAMENDI
Insurance Commissioner

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16 /s/
17 _____

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